

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

October 28, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 28, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the Board of Supervisors Chambers. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls, John Overbey, Steven Beauch and Robert Gibbons

Members Absent: Cecelia Kirkman

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Ackermann stated the new member of the Board of Zoning Appeals, Dean Larson was at the meeting to observe since he has not been sworn in yet. He asked if there were any changes to the advertised agenda.

Ms. Hudson stated there were no changes to the advertised agenda.

DECLARATIONS OF DISQUALIFICATIONS

None

PUBLIC HEARINGS

1. **SE08-9/2800630 - CHARLES WILLIAMS** - Requests a Special Exception per Stafford County code, Section 28-35, Table 3.1, "District Uses & Standards", to allow the keeping of a horse on a three-acre or larger lot on Assessor's Parcel 45-35C. The property is zoned R-1, Suburban Residential, located at 117 Musselman Road.

Ms. Hudson read the staff report. She stated the applicant is requesting a special exception to keep a horse on this R-1 zoned property. She stated Mr. Williams believed that he could again keep a horse on his property as he had done so before. She stated he has not had a horse on the property since 1999 therefore had lost the nonconforming use to do so. She stated Stafford County's Zoning Ordinance allows someone to apply for a special exception to keep horses or ponies on R-1 property if the parcel is three (3) acres or larger. She stated the Zoning Ordinance also addresses special regulations in Code Section 28-39(d): 1) Any structure for the housing of said animals shall be at least 150 feet from any property line; 2) Such lots shall be properly fenced to contain said animals; 3) No more than one animal shall be allowed for each two (2) acres of rangeable land. She stated for the purposes of this section, "rangeable land" is an area properly fenced for use by horses, not including house or yard areas. She stated Code Section 28-351 "Grant of Special Exceptions" states that if the Board of Zoning Appeals shall find that the use for which a special exception is sought shall be in accord with stated standards, it may grant the exception, provided that all other provisions of law shall be complied with.

***Stafford County Board of Zoning Appeals
October 28, 2008***

She stated Virginia Code 15.2-2309 authorizes the BZA to hear and decide applications for special exceptions and may impose conditions relating to the use for which the permit is granted as it may deem necessary in the public interest. She stated Stafford County Code Section 28-352 authorizes the BZA to impose conditions regarding the structure or use as it may deem necessary in the public interest. She stated based upon Virginia State Code and County Code authorizing the BZA to impose conditions, the BZA has the ability to limit the duration of a special exception permit, if the BZA determines that the special exception should be approved. She stated the shelter on the property did not meet the 150 feet setback from every property line. She stated the applicant had owned and lived on the property since 1955 and there had been animals and was used for farm use since 1955.

Mr. Ackermann stated the drawing showed the barn to be 80 feet from the property line and asked if this was a proposed stall.

Ms. Hudson stated that was an existing building.

Mr. Overbey asked if there was only one building on the property.

Ms. Hudson stated that was correct, there was only one stable.

Mr. Gibbons asked when the property was zoned R-1.

Ms. Hudson stated it showed on the 1978 Comprehensive Map as R-1.

Robert Williams stated he was the nephew of the applicant and was speaking on his behalf. He stated the 80 feet from the property line was that property line that connected their properties and stated that would not be a problem. He stated the proposed stall would be 150 feet or farther from his property line.

Mr. Gibbons asked if the proposed barn would be 150 feet from his property line.

Mr. Williams stated yes and it would be 150 feet from all other abutting properties as well.

Mr. Overbey asked if the existing building would be used for the horse.

Mr. Williams stated the existing stall would not be used in the future unless the applicant could get a waiver.

Mr. Ackermann asked if the fence on the drawing would be the area where the horse would be.

Mr. Williams stated yes. He stated the applicant has an area partially fenced that was not being used currently. He stated the applicant has nine (9) acres total.

Mr. Ackermann stated he drove by the property and noticed a fence by the road.

Mr. Williams stated that was the fence that the horse would be in.

Mr. Overbey asked how much land was fenced.

Mr. Williams stated the total nine (9) acres was fenced.

Mr. Overbey asked how many acres would be used for the horse.

Mr. Williams stated three (3) or four (4) acres would be used for the horse.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mr. Ingalls asked if there were a couple of ponds on the property.

Mr. Williams stated yes.

Mr. Ingalls asked if they would be used for watering the horse.

Mr. Williams stated no and the ponds were fenced in.

Mr. Ingalls asked where the horse feed would be stored.

Mr. Williams stated it was stored in the stall.

Mr. Ingalls asked how the horse manure would be disposed of.

Mr. Williams stated the manure would be taken to the back of the property to be spread over the pasture.

Mr. Ingalls asked if the manure would run off into any streams.

Mr. Williams stated no.

Mr. Overbey asked how far the property was from the Rappahannock River.

Mr. Williams stated it was approximately half a mile.

Mr. Overbey asked what was between the property and the river.

Mr. Williams stated that area was all woods.

Mr. Overbey asked if there were streams in the area.

Mr. Williams stated the closest stream was 200 or 300 yards east of the applicant's property.

Mr. Ingalls asked if the Special Exception was for just one (1) horse.

Mr. Williams stated yes.

Mr. Ingalls asked if the fences were away from the property line.

Mr. Williams stated the only fence the horse could lean over would be onto his property. He stated his property was to the left of the applicant's property.

Mr. Gibbons stated he found nine (9) acres at the Commission of Revenue site.

Mr. Williams stated the parcel on the application was a little over five (5) acres; the applicant also owned a property behind the parcel on the application that was a little over three (3) acres.

Ms. Hudson stated lot 35C was 5.74 acres.

Mr. Ackermann opened the public hearing for public comment.

Linda Thomas stated she did not know the applicant and was appalled to read in the newspaper how a Stafford County Zoning Official treated him. She stated she had lived in the county for 29 years and had seen the

***Stafford County Board of Zoning Appeals
October 28, 2008***

county go from a rural county to a county of subdivision with a few remaining farms. She stated she hated to see people who had lived in the county for many years be forced to change their way of life to make room for development. She stated the applicant's property was grandfathered in the Zoning and would be able to operate the farm as long as he did not change the use of the land. She stated the applicant did not change the use of the land and had not had a horse for a few years, but still engaged in agriculture. She stated she did not feel that the applicant should have to apply for a Special Exception to have another horse and the applicant should not have been treated in a threatening way by a County Zoning Official. She stated she was in favor of the application.

Kenneth Mills stated he had known Mr. Williams since 1953 and the property had not changed over the years. He stated the applicant's farm was well taken care of and he was in favor of the application.

Mr. Ackermann asked if there was any member of the public that wished to speak in opposition of the application.

Sam L. Musselman stated he had lived at his property since 1957 and was directly across the street from the applicant's property. He stated the applicant had a horse ten (10) years ago and the neighbors could not go outside without having to smell the horse. He stated the Zoning Official came to the property to advise the applicant of the violation and the horse would need to be removed from the R-1 zone. He said Mr. Williams stated that he paid taxes in the county and could do whatever he wanted. He stated he did not feel the Zoning Official was being disrespectful. He stated there were other neighbors that were here in opposition also and had done everything to try and get along with the applicant. He stated he would like the horse to be moved to the back of the property.

Mr. Ingalls asked Mr. Musselman if his major concern was the horse in the front of the property.

Mr. Musselman stated yes.

Mr. Overbey asked where the previous horse was kept.

Mr. Musselman stated the horse was kept in a barn at the back of the property.

Mr. Gibbons asked if the three (3) acres discussed was not part of the application.

Ms. Hudson stated that was correct and the only parcel listed on the application was 35C.

Mr. Gibbons asked if the applicant chose to modify the application would it have to be re-advertised.

Ms. Hudson stated yes.

David Sirekis stated he had no problem with the horse and requested that the horse be kept at the back of the property. He stated the smell has already begun and the front of the property where the horse was kept was very visible. He stated he felt the barn should be set back further than proposed. He stated he did not want any contamination to get into the water supply and asked the BZA if they approved the application, if they would be able to restrict the horse to the back of the property.

Mr. Ingalls asked if the horse location was the problem for adjacent properties.

Mr. Sirekis stated yes and he did not want to see or smell the horse.

Sam Musselman Jr. stated he lived at the property across from Charles for 49 years. He stated their families were friends and neighbors for the last 60 years. He stated the proposed fence would be twenty five (25) feet

***Stafford County Board of Zoning Appeals
October 28, 2008***

from Mr. Musselman's front yard. He stated it would not be a problem if the horse was put in the field in the back of the property. He stated he did not want the applicant to lose the horse but he did not want the horse in the proximity of the front yard.

Harry Crisp stated he was the Supervisor for the George Washington District. He stated he had the expectation to work out a reasonable compromise to allow the applicant to keep his horse and satisfy the concerns of the public. He stated in 1988 the County passed an ordinance that restricted the keeping of horses on residentially owned land. He stated subsequently in March 2008 the County brought the Ordinance for non-conforming uses in line with State Code, which meant that any non-conforming use discontinued for more than two (2) years would no longer be allowed unless by Special Exception. He stated the applicant had exceeded the two (2) year limit for having a horse. He stated he thought there might be a potential compromise and was concerned that if the BZA granted the Special Exception it would go with the property from this point forward. He stated he did not feel that a Special Exception like this be granted for R-1 zoned land and asked the BZA to defer the Special Exception for one month to allow the Board of Supervisors to determine whether there was an amendment to the ordinance that could be made so the applicant would be allowed to keep the horse and satisfy the concerns of the neighbors.

Mr. Ackermann asked if Mr. Crisp would bring the ordinance to the Board of Supervisors.

Mr. Crisp stated he would request that the item be placed on the agenda for discussion at the November 5, 2008 Board of Supervisors meeting. He stated he would request that the County Attorney and Planning Administrator review the ordinances to determine the most desirable steps to take.

Mr. Ackermann asked if it would be appropriate for the public to come to the November 5, 2008 meeting to express there opinions.

Mr. Crisp stated that was fine.

Mr. Overbey asked if Mr. Crisp had spoken with the applicant.

Mr. Crisp stated no.

Mr. Ingalls asked if there was enough time for the Board of Supervisors to review the item and bring it back to the BZA at the next meeting.

Mr. Crisp stated after the November meeting the Board of Supervisors and the BZA would know if there was any way to amend the ordinance or whether to let the item proceed.

Mr. Williams stated the horse was never in the front field nearest to Musselman Road. He stated the horse was never meant to be in the front field and the yard was double fenced for security. He stated the horse was walked through the front field and the horse stall was put approximately 25 feet from the applicant's bedroom window to keep watch over the horse.

Mr. Overbey asked if the applicant would have an issue with deferring this item until the November meeting.

Mr. Williams stated no.

Mr. Ingalls asked if the BZA could place a condition on the special exception if the application was approved. He stated conditions could be: having the horse located at the rear of the property, ad the other three (3) acres as part of the application and allow the Board of Supervisors time to review the issue.

Mr. Overbey asked Ms. Hudson if the three (3) acre parcel was added to the application it would need to be re-

Stafford County Board of Zoning Appeals
October 28, 2008

advertised.

Ms. Hudson stated it would need to be re-advertised for the November meeting.

Mr. Ackermann closed the public hearing.

Motion:

Mr. Gibbons made a motion to defer SE08-9/2800630 for the time that the Board of Supervisor member requested.

Mr. Ingalls seconded the motion. He stated in respect for the Board of Supervisors the BZA should consider deferring item 1 for one month. He stated the Board of Supervisors may have more flexibility trying to amend an ordinance. He state the BZA would have to approve it forever and the horse would go with the property. He stated whoever owned the property would have a right to a horse and was concerned about the advertising of the other parcel and would give staff time to re-advertise.

Vote:

The motion to defer item SE08-9/2800630 until the November 25, 2008 meeting passed 5-0.

Mr. Ackermann – yes

Ms. Kirkman – absent

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

2. **SE08-10/2800631 - WYVETTA BOWLES** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", to allow a beauty salon as a Home Business on Assessor's Parcel 21K-2-8. The property is zoned A-2, Rural Residential, located at 40 Juggins Road, Docstone Woods Subdivision.

Mrs. Musante read the staff report. She stated the applicant was requesting a Special Exception to operate a Beauty Salon at her home and the Commissioner of Revenue records show the dwelling to be 3,232 square feet. She stated the applicant indicated 700 square feet would be used for the business, which did not exceed the allowed 25 percent. She stated the days and hours of operation would be Monday and Tuesday, emergency only, Wednesday to Friday, 9 am to 6 pm and Saturdays, 7 am to 2 pm. She stated there would be one employee that did not reside at the property and there would be five (5) to ten (10) clients per day. She stated the applicant indicated there would be demonstration of skin care applications. She stated the dwelling was constructed in 2007 and a permit to finish the basement was issued September 5, 2008. She stated the plans submitted for the permit did not indicate plans for a salon; development conditions would be days and hours of operation, customers by appointment only and to provide off street parking.

Mr. Beauch asked if the requirements were different for the permit if the plans for the salon had been included on the build out plans provided for permit approval.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mrs. Musante stated no, not for zoning requirements. She stated there might be some building code issues, when the applicant applies for a Special Exceptions they are advised to contact the building department to make sure building code requirements are met.

Mr. Gibbons asked if this property was on public water and sewer or septic.

Mrs. Musante stated on the plat, there was indication of a private sanitary sewer lateral easement and was not sure what that meant.

Wyvetta Bowles, applicant, stated she had lived in the county since 1990 and owned a salon previously for fourteen (14) years. She stated at her salon she had six (6) stations and had a training program for high school students in the community. She stated she previously trained students through the cosmetology program in the county. She stated she was asking for a Special Exception because she wanted to downsize her business from six (6) to three (3) work stations. She stated she and her husband purchased this property because they had aging parents that would be staying at the residence from time to time. She stated she serviced many types of people and by downsizing she would be catering to her clients in a more private setting.

Mr. Gibbons asked if the applicant was on well and septic.

Mrs. Bowles stated no.

Mr. Ackermann asked if the applicant would continue working with high school students.

Mrs. Bowles stated yes. She stated she would be more available to go to the high schools and work with the cosmetology programs.

Mr. Ackermann asked if the high school students would be at the applicant's facility.

Mrs. Bowles stated the only time the students would be at the facility when requested of their teacher to allow the student to earn additional credit.

Mr. Ackermann asked if there were other businesses in the neighborhood or nearby.

Mrs. Bowles stated she could walk to Docstone Shopping Center.

Mr. Beauch asked if the applicant was licensed in cosmetology.

Mrs. Bowles stated yes.

Mr. Beauch asked how many students would come to the residence at a time.

Mrs. Bowles stated only one (1).

Mr. Beauch asked what the highest volume of vehicles would be at the property at one time.

Mrs. Bowles stated two (2) or three (3). She stated students and a lot of clients are dropped off.

Mr. Beauch asked if there were three (3) stations and two (2) employees, who would use the third station.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mrs. Bowles stated the assistant would use one (1) station and she would use two (2) stations.

Mr. Beauch stated there were complaints from the neighbors about traffic and asked if the applicant was aware of the complaints and why the neighbors thought there may be too much traffic.

Mrs. Bowles stated the employee would be dropped off and the applicant had four (4) vehicles.

Mr. Ingalls stated the application indicated there would be demonstrations and asked if the demonstrations would be for a group.

Mrs. Bowles stated normally that would be outside of working hours and friends getting together for fellowship. She stated there may be one (1) to three (3) people.

Mr. Ingalls asked if the area for the shop was in the basement.

Mrs. Bowles stated yes.

Mr. Ingalls asked if it was on the back half of the house.

Mrs. Bowles stated yes.

Mr. Ingalls asked how the clients would enter the residence.

Mrs. Bowles stated there would be a basement entrance at the back of the property.

Mr. Ingalls asked if there was a sidewalk.

Mrs. Bowles stated yes.

Mr. Ingalls asked if the product would be toxic and if the products could be disposed.

Mrs. Bowles stated the product she used were environmentally friendly.

Mr. Ingalls asked how the applicant would dispose of trash.

Mrs. Bowles stated trash was taken to the county facility weekly.

Mr. Gibbons advised the applicant to check with Code Administration to see if the business would be in compliance with current building regulations.

Mrs. Bowles stated she had spoken with Code Administration and was given guidance for the building code for the beauty salon.

Mr. Ackermann opened the public hearing for public comment.

Jimmy Bowles stated he was the husband of the applicant and stated the property had a backflow prevention system. He stated the high school and college students benefit from the service provided. He stated the business would be separate from the home living and the driveway was extended for the bigger vehicles that the applicant owned. He invited the BZA or any of the concerned neighbors to come out and visit the property.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mr. Gibbons stated the application was filed on August 18, 2008 and officially submitted on September 16, 2008. He stated the applicant received a building permit on September 5, 2008 and did not indicate that a salon would be located in the basement.

Mrs. Bowles stated wanted to get approval from the BZA first.

Angela Brown stated she was a client of the applicant. She stated her daughter worked for the applicant and loved the environment the applicant set up.

Mr. Ackermann asked if anyone was in opposition to the application.

Laurel Baker stated she was the president of the Perry Farm Homeowners Association (HOA) and was speaking on behalf of 152 homeowners subdivision. She stated she sent a memo last week that was included in the packages the Board received. She stated Perry Farms HOA was created in order to support, maintain and pay for a stormwater system for the commercial center. She stated Juggins Road was the line at the time were county utilities stopped and all of the homes beyond that point were on septic and well. She stated she was surprised to hear that the applicant had utilities along Juggins Road. She asked the Board to get a water bill for that property to confirm whether the applicant was on public water and sewer. She stated the area was rural and wooded and Smith Lake reservoir was in that area. She stated the residents were very concerned that a Special Exception would be permanent and granted to a residence. She stated she felt the applicant would be very busy and the business would be under pressure to grow and the adjacent lots would be affected adversely. She stated the Winning Image Salon was a terrible retail neighbor and at one point had turned the road into a parking alley, which was why there are parking signs that currently lined the road. She urged the Board to consider the surrounding community when making a decision for this project. She asked the Board to give full consideration to the memo provided.

Mr. Ackermann asked how far Perry Farms was from the applicant's property.

Ms. Baker stated the neighborhood was next to the applicant's property.

Mr. Ackermann asked if the HOA had rules against businesses in Perry Farms.

Ms. Baker stated there were white collar businesses in Perry Farm, as well as daycare.

Mr. Ackermann verified that businesses were allowed in Perry Farms in homes.

Ms. Baker stated yes, but not retail businesses with traffic.

Mr. Ackermann stated daycare sounded like traffic.

Mr. Overbey stated this residence was not in Perry Farms.

Ms. Baker stated that should not be an issue and Perry Farms would be affected.

Mr. Ingalls stated the plat provided indicated a water meter in the front yard and a private sanitary sewer lateral easement, which indicates that there would be sewer and water provided to the applicant.

Mr. Beauch asked why the applicant would indicate two (2) or three (3) vehicles and the memo received from the HOA indicated the street was flooded with cars.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Ms. Baker stated she was pointing out the experience with a retail beauty salon.

Mr. Beauch asked if Ms. Baker had seen the parking problem with Mrs. Bowles business.

Ms. Baker stated she did not know if the applicant's business was fully operational.

Scott Kelly former President of the Perry Farm HOA. He stated he has lived in Stafford for fifteen (15) years and in his residence for nine (9) years. He stated the neighborhood suffered from commercial creep and there are 152 homes in Perry Farms. He stated his concerns was that the community was under siege and had a battle with Silver, worked with the Board of Supervisors and the Board of Zoning Appeals. He stated he would like to keep the neighborhood a neighborhood. He stated there was plenty of commercial space in Doc Stone Commons.

Tamara Robinson stated her house was directly adjacent to the applicant's residence. She stated she wanted to protect the interest of the homeowners and the neighborhood. She stated this would decrease property value to the subdivision and people do not want to live where there are businesses in the neighborhood. She stated there was a school that was half a block away that brought strangers into the neighborhood. She stated anytime traffic increases the risk of crime is prevalent and parking with lots of vehicles gives a sloppy appearance. She stated there was no benefit to her or the neighborhood.

Eunice Paxson stated the applicant may have good intentions and was concerned that there may be a situation when the business grows. She stated a growing business would bring more traffic into the neighborhood. She asked the BZA to consider the residents who own homes in the area.

Mrs. Bowles stated she had already had an opportunity to grow and still decided to downsize. She stated there would still be traffic in the development and there were illegal businesses being operated in this development.

Mr. Beauch asked if the applicant was currently operating the salon at this location.

Mrs. Bowles stated no. She stated she had been working out of another salon.

Mr. Beauch asked if the applicant was in the process of setting up the basement.

Mrs. Bowles stated yes.

Mr. Overbey asked about the vehicles in the pictures provided.

Mrs. Bowles stated that was her family. She stated she had two grown children and parents and the four (4) vehicles were the residents.

Mr. Ingalls stated he was bothered by the traffic and wanted to make sure that the issued discussed would not happen at the residence. He stated there could not be any more then one employee and limit the number chairs in the salon.

Mrs. Bowles stated that was fine.

Mr. Ingalls stated the conditions should be customers by appointment only, maximum number of clients per day. He stated if the Special Exception was permitted the BZA would provide specified conditions for the applicant.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mr. Beauch stated he understood the concerns of the neighbors and let the applicant know that if the application was approved there would be conditions placed on the property. He asked if anyone would know that a business was being run out of the property.

Mrs. Bowles stated no.

Motion:

Mr. Beauch made a motion to approve SE08-10/2800631 with the following conditions: Days and Hours of Operation would be Monday through Friday 9:00 AM – 6:00 PM and Saturday 8:00 AM – 3:00 PM, customers by appointment only, applicant must provide off street parking, limited to no more than three (3) work stations and limited to no more than ten (10) clients per day and no more than two (2) clients per day on Monday and Tuesday in emergency only cases.

Mr. Ingalls seconded the motion and asked to add a friendly amendment of the conditions: no sign permitted, maximum number of clients for a demonstration would be three at any one time, on Saturday from 8:00 AM to 3:00 PM and would limit to five (5) clients, any improvements to the home must meet building code and health code and reference conditions set forth in Code 28-25.

Mr. Beauch stated he would accept the friendly amendment to the motion.

Mr. Ackermann asked staff to read back the conditions listed by the Board.

Mrs. Musante read back the conditions.

Mr. Gibbons asked what if the basement did not meet code would the business be void.

Mr. Ackermann stated the applicant would then be in violation. He asked if the property would be inspected.

Mrs. Musante stated once the application was made for a home business, there would be a requirement for a building code inspection.

Mr. Gibbons stated the application must meet the building code and health code requirements.

Mr. Beauch stated he would accept that addition as a friendly amendment.

Mr. Ackermann stated Saturdays have the possibility of being busier and asked for an amend the client count for Saturdays to seven (7).

Mr. Beauch stated he would accept that as a friendly amendment.

Vote:

The motion to approve application SE08-10/2800631 with conditions passed 6-0.

Mr. Ackermann – yes

Ms. Kirkman – absent

Mr. Ingalls – yes

Mr. Overbey – yes

Stafford County Board of Zoning Appeals
October 28, 2008

Mr. Gibbons – yes
Mr. Beauch – yes

- 3. V08-4/2800632 - BROOKE FIRE SAFETY ASSN INC.** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Use & Setbacks", front yard requirement, to allow an additional on-premises parking structure on Assessor's Parcel 39-101F. The property is zoned A-1, Agricultural, located at 222 Andrew Chapel Road (Brooke Fire Station).
- 4. V08-5/2800633 - STATLER JOHN & JAMIE** - Requests a Variance from Stafford County Code, Section 28-38(c), "Performance Regulations, Accessory Buildings/Structures", to allow the construction of a detached garage to be closer than the required ten (10) feet of any other structure located on Assessor's Parcel 54P-4-173. The property is zoned R-1, Suburban Residential, located at 4 Tally Ho Drive, Woodlawn Subdivision.

Mrs. Musante read the staff report. She stated in order for the applicant to meet the required set setback, the proposed garage would have to be constructed with a three foot separation instead of the required ten (10) feet. She stated the dwelling was constructed in 1987 and the 28 by 10 screened porch was constructed in 2001.

Mr. Gibbons asked why the garage could not be attached.

Mr. Ackermann asked if there would be a zoning problem if the garage was attached.

Mrs. Musante stated it would not meet the required ten (10) foot side yard setback if the garage was attached.

Mr. Ackermann stated he would open the public hearing and asked the applicant to come forward to speak regarding his case.

John Statler stated he had photos of the property for the Board. He stated he would like to create a garage centered on the existing driveway to avoid disturbing the lay of the land and avoid removing trees from the back of the property. He state in his neighborhood there were several homes that had garages that were closer then the required ten feet. He stated he wanted to construct the garage closer to the house, but not attached to the house because he would loose a window that let light into the home.

Mr. Gibbons asked what was the hardship.

Mr. Ackermann stated Mr. Gibbons would need to ask the applicant for the reasons of the hardship.

Mr. Statler stated the hardship was because the applicant was a doctor, not having a garage could delay patient care. He stated he had a letter from the residents at 6 Tally Ho Drive that endorsed the garage.

Mr. Overbey stated one thing the Board was required to consider with a Variance was whether the property could be used as zoned if the Variance was not granted. He asked if the property could still be used as a residence if the Variance was not approved.

Mr. Statler stated yes.

Mr. Overbey stated the applicant did have options available on the property, which possibly would include taking out trees or shrubs.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mr. Statler stated he preferred to use the existing space and not remove any trees from the property.

Mr. Overbey stated the BZA was restricted by state law.

Mr. Ackermann asked if this was for a two (2) car garage.

Mr. Statler stated yes.

Mr. Ingalls stated the Board would like to consider the application but being a doctor was not really a hardship. He stated the Board could not consider the application on that alone and advised the options that may be available to the applicant. He stated the garage could be attached to the home.

Mr. Statler stated attaching a garage would require construction to the house and would require moving utilities meters and remove a window from the home.

Mr. Beauch asked what kind of utility meter was at the home.

Mr. Statler stated electric.

Mr. Ingalls stated another option could be reducing the garage to a one (1) car garage and move the garage back, which would allow it to still be attached. He stated the garage would cover the window because of the small space between the house and the garage.

Mr. Statler stated it might not be much of a view but would still provide light to the residence.

Mr. Overbey asked what room in the house was the window located.

Mr. Statler stated the window was located in the laundry room.

Mr. Ingalls stated the best option might be pushing the garage back ten (10) feet from the house. He stated the back of the garage would then be 36 feet from the house.

Mr. Statler stated if the garage was pushed back, he would need to remove mature trees. He stated he did not understand why it had to be ten (10) feet from the property and could not find a good reason why that number existed.

Mr. Ingalls stated it was an accessory structure, the zoning allowed for light, air and fire requirements between structures.

Mr. Overbey asked the applicant what was the reason for the rule. He stated the distance between the residence and an accessory structure would be for safety reasons.

Mr. Ackerman asked if the ten (10) foot requirement was a state guideline.

Mr. Gibbons stated that within the Code there were different recommendations.

Ms. Hudson stated the applicant could look into a Boundary Line Adjustment (BLA).

Mr. Statler stated he had not looked into a Boundary Line Adjustment and stated the home on the adjacent property was closer to the property line.

Stafford County Board of Zoning Appeals
October 28, 2008

Mr. Ackermann opened the public hearing for public comment.

With no one coming forward, Mr. Ackermann closed the public hearing for public comments.

Mr. Overbey stated the main reason for requesting the denial was because the application did not meet the criteria for a Variance. He stated the hardship was not entirely self imposed, the reasons the applicant gave were not a true hardship, the property would still be able to be used as zoned. He stated there were options to either make a smaller garage or move the garage to the back of the property and take down trees.

Mr. Ingalls stated he seconded the motion based on the same criteria that by state law the applicant did not meet the requirement of the hardship. He stated the applicant did have other options for the property.

Mr. Gibbons asked Ms. Hudson if this was explained to the applicant when he applied for the Variance.

Mrs. Musante stated she had explained the process to the applicant and advised the applicant that this would need to be based on a hardship.

Motion:

Mr. Overbey made a motion to deny application V08-5/2800633.

Mr. Ingalls seconded the motion

Vote:

The motion to deny application V08-5/2800633 passed 5-0.

Mr. Ackermann – yes

Ms. Kirkman – absent

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

5. **V08-6/2800646 - ROMNEY C & MELISSA S ANDERSEN** - Request a Variance from Stafford County Code, Section 28-62(g)(2)f.2.(a)&(c) "General Performance Criteria" to construct retaining walls to stabilize a steep slope on Assessor's Parcel 49C-2-3-E. The property is zoned A-2, Suburban Residential, located at 159 Indian Point Road.

Mrs. Musante read the staff report. She stated the dwelling was constructed in 1961 and the BZA approved a Variance to construct a bulkhead on May 27, 2008 and the permit was issued June 11, 2008. She stated Amber Forestier, Environmental Planner was available for questions.

Amber Forestier, Environmental Planner, Department of Planning and Zoning, stated Assessor's Parcel 49C-2-3-E was located at the end of Marlboro Point on Potomac Creek. She stated the 100 foot Critical Resource Protection Area (CRPA) buffer covers a portion of the lot as shown on the plat of survey. She stated the lot was flat until 60 feet from the house, where there was an abrupt fall of 22 feet over a horizontal distance of 35 feet to a flat area behind the new bulkhead. She stated the applicant proposed to terrace the slope by constructing six (6) retaining walls in the location shown on the site plan. She stated

Stafford County Board of Zoning Appeals
October 28, 2008

the slope appeared to be eroding at an accelerated rate due to the steepness of the slope, which averaged 60 percent slope and to erosion associated with overland flow, which was impeding the growth of vegetation needed to stabilize the slope. She stated the staff took into account the following factors: 1) orientation of the shoreline facing southeast was open to high erosion during coastal storms up to eight (8) feet, which was the approximate flood plain elevation and 2) there was evidence of erosion, shown by the steep un-vegetated bank, in the photographs provided. She stated continued erosion of the slope could lead to property damage as well as the loss of old existing trees in the RPA. She stated the Major Water Quality Impact Assessment indicated that the retaining walls and associated plantings would improve water quality in Potomac Creek. She stated the parcel comprised a portion of the state listed archaeological polygon. As no federal or state permits were required and therefore no section 106 review, which pertained to historical issues, could be required a condition had been added to the application to deal with possible artifacts that might be discovered. She stated ongoing severe erosion represents a potential threat to the property; the proposed retaining walls would improve the property by allowing trees to be saved, sections of the RPA buffer to be re-vegetated and slow the amount of soil washing into Potomac Creek. She stated if the Board were inclined to approve the request, staff would recommend the following conditions 1) that a building permit be issued to build the retaining walls; 2) the property shall sign and implement the attached mitigation plan upon completion and approval of the project; 3) development of the site shall be in accordance with appropriate requirements of chapter 11 of the Erosion and Sediment Control County Code; and 4) should any artifacts be uncovered during construction, the artifacts should not be disturbed and both the County Historic Preservation Planner and Virginia Department of Historic Resource shall be contacted.

Mr. Ackermann asked when the Variance came before the BZA in May, why was this not mentioned. He asked if this was an issue then.

Mrs. Forestier stated the applicant was aware that something would have to be done in the future.

Mr. Ingalls stated the four conditions listed should be considered as conditions. He asked if the contractor would need to be responsible to stop digging in the event that artifacts were uncovered.

Mrs. Forestier stated there were no ordinances or state regulations that require the project be supervised for artifacts. She stated this site was an important archaeological site and wanted to be sure none of the artifacts were lost. She stated the BZA would be welcome to add any conditions they feel necessary.

Mr. Ingalls stated the BZA should consider mentioning having a representative at the site to oversee the project. He asked if there would be a real plan put into place and what would prevent tree from being cut down.

Mrs. Forestier described the materials being used to build the walls and stated no trees could be cut down in the RPA without permission.

Mr. Beauch asked if this was the best thing to do for this property.

Mrs. Forestier stated yes.

Melissa and Romney Andersen stated two years ago they found this home and decided to retire in Stafford County after Mr. Anderson retired from the service. She stated the property had a dilapidated bulkhead that had been destroyed by Hurricane Isabel. She stated after purchasing the property, the property was impacted by Tropical Storm Ernesto, which took out much of the remaining bulkhead and washed out a significant portion of the cliff. She stated they saved for two years to replace the bulkhead

***Stafford County Board of Zoning Appeals
October 28, 2008***

and at the top of the bulkhead they were still able to see the damage done but Ernesto. She stated the slope was still vulnerable to future storm damage. She stated they studied State and County regulations, consulted with horticulturist and landscapers, which led to a consensus that a series of retaining walls would be needed along the contour of the slope. She stated they felt it would be a wise investment because it would preserve the property, given the significant cost of the project. She stated they when the bulkhead was replaced, the contractor start work without approval. She stated they were required to agree to a mitigation plan, requiring them to re-vegetate 28 trees and shrubs in an 800 square foot area directly behind the bulkhead where previously no vegetation existed. She stated they thought the plan was unreasonable and wanted to cover the area in indigenous shrubs and not trees, because the root system of the trees could damage the bulkhead. She stated since there was no alternative for the bulkhead to be completed, they accepted it as punishment for the actions of the contractor. She stated they were faced with a second financial investment to protect the property from further erosion and must sign another mitigation plan to replace certain vegetation that currently does not exist. She stated the current mitigation plan mandated 314 shrubs and plants be planted in a 2,000 square foot area at a cost of over \$14,000. She stated this was unreasonable and cost prohibitive and had always planned to re-vegetate the property. She asked why the mitigation plan could not be jointly developed, instead of a copy given to the applicant with no options available. She stated the property was listed in the National Register with a Native American archaeological site; the site was located along the steep bank and would likely be lost if the application was not approved. She stated they appreciate all of the work staff has done regarding the site. She stated this process was troubling and intimidating, this process has left them skeptical of the green agenda and was beginning to assume anything done to land was a bad thing and must be counter balanced with a mitigation plan. She stated the applicant's feel the entire project was a mitigation plan and the retaining walls were required because of an act of nature.

Mr. Gibbons stated he saw the mitigation plan and found it disturbing, the BZA should encourage residents to maintain properties and was not sure that that applicant's could meet the April 1, 2009 deadline, listed in the plan.

Mrs. Andersen stated they did not agree to the plan with the recommendations listed.

Mr. Andersen stated this was cost prohibitive and could not agree to the plan. He stated the only goal was to protect the property.

Mr. Gibbons asked when the applicants received the mitigation plan.

Mrs. Andersen stated they received the plan in the mail on October 25, 2008.

Mr. Beauch asked if there was another mitigation plan that the applicants had in mind, the Board would look at it and possibly take it into consideration

Mr. Andersen stated they would not mitigate anything because there was no existing vegetation.

Mr. Gibbons stated the mitigation plan that the applicant suggested was to terrace the walls.

Mr. Beauch stated there would need to be something in writing regarding the plan the applicants were suggesting.

Mr. Anderson stated if the retaining walls were built and filled behind the wall with dirt, it would be better then nothing at all. He stated with the mitigation plan, they would not be able to afford the cost and

***Stafford County Board of Zoning Appeals
October 28, 2008***

would have to let the project go and allow the erosion to happen. He stated there was a lot that could potentially be lost.

Mr. Beauch suggested to defer this item for thirty (30) days.

Mrs. Andersen stated that her husband would deploy to Iraq in two (2) weeks and would need some resolution.

Mr. Ingalls asked if the applicants had committed to building the walls.

Mrs. Andersen stated they had a contract that would not be signed until a process was agreed to. She stated if the plan tonight was based on a \$14,000 mitigation plan, they would not sign the contract for the retaining walls to be completed.

Mr. Gibbons asked the cost of the project.

Mr. Andersen stated it was over \$50,000 for the walls.

Mr. Gibbons asked if the walls could be constructed and then wait six (6) or seven (7) months to see what happens.

Mrs. Forestier stated planting would need to be in certain time of year for plants to survive and that was why there was a deadline.

Mr. Beauch asked if the project would go forward with construction while Mr. Andersen was in Iraq.

Mr. Andersen stated the construction would begin if there were no mitigation plan.

Mr. Beauch asked if there was time to meet with Mrs. Forestier to discuss the mitigation plan.

Mr. Andersen stated he did not see what was being mitigated, there were no trees or shrubs in the area that was affected. He stated he did not want to be threatened with deadlines and fines and would like to go to Home Depot and buy plants and shrubs to plant himself, rather than paying an additional \$14,000 for a landscaper.

Mrs. Forestier stated in the State Code 9 VAC 10-20-130 number 3 stated "a hundred foot wide buffer for an area of vegetation that is effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff shall be retained if present and established where it does not exist". She stated that was the reason the county required mitigation plans, however, because of the prohibitive cost she did not foresee any problem in working with the Andersen's over a longer period of time.

Mr. Overbey asked how long the timeframe would be.

Mrs. Forestier stated by fall 2009.

Mr. Andersen stated he did not want to agree to a moving target and asked the Board to trust his judgment and his desire to protect the environment.

Mr. Ackermann stated if the State Code required the buffer to be in place and for some reason the applicant was not able to put the buffer in place then the applicant would be subject to fines.

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mrs. Forestier stated she could add language which would state the applicant would need to re-vegetate the RPA with staff input within the next two (2) years. This would be something on paper that could be enforced if the re-vegetation was not completed.

Mr. Andersen stated that was exactly what the applicant was asking for.

Mr. Overbey stated he would recommend three (3) years for the re-vegetation to be completed with staff consultation.

Mr. Ingalls stated it was hard for him to trust what is discussed. He stated he was appointed to be a BZA member and there were several things he would be required to look at before approving applications.

Mr. Ackermann opened the public hearing for public comment.

With no one coming forward, Mr. Ackermann closed the public hearing for public comments.

Motion:

Mr. Overbey made a motion to approve the request for a Variance V08-6/2800646 with the conditions that the building permit shall be obtained for the walls, the area re-vegetated in three (3) years with staff input, development on site should meet the requirements of Chapter 11 and should any artifacts be uncovered during construction the artifacts should not be disturbed and the Historic Preservation Planner should be contacted.

Mr. Beauch seconded the motion.

Mr. Overbey made the motion because he felt that the property could still be used but the applicant was losing property. He stated it appeared to him that the applicant did everything he could to stop the erosion along the property line.

Mr. Beauch stated he seconded the motion because he lives on a piece of property almost identical to the applicant and can sympathize with them. He stated he believed what the applicant was doing was reasonable and was willing to trust that the applicant would re-vegetate the affected area.

Mr. Ackermann stated he wanted to propose a friendly amendment to include the that this meets the spirit of the Riparian Buffer Modification and Mitigation Guidance Manual.

Mr. Overbey accepted the friendly amendment to the motion.

Mr. Ingalls stated he would have a hard time approving the application. He stated he would like to approve the application but was not sure what to vote.

Vote:

The vote to approve the Variance passed 4-1.

Mr. Ackermann – yes

Ms. Kirkman – absent

Mr. Ingalls – no

Mr. Overbey – yes

***Stafford County Board of Zoning Appeals
October 28, 2008***

Mr. Gibbons – yes
Mr. Beauch – yes

UNFINISHED BUSINESS

None

REPORT BY ZONING ADMINISTRATOR

Ms. Hudson stated the Board would need to vote tonight whether or not to have a December BZA meeting.

Motion:

Mr. Overbey made a motion to cancel the December meeting.

Mr. Beauch seconded the motion.

Vote:

The vote to cancel the December meeting passed 5-0.

Mr. Ackermann – yes
Ms. Kirkman – absent
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Beauch – yes

ADOPTION OF MINUTES

September 23, 2008

The Board decided to postpone consideration of the minutes until the November meeting.

OTHER BUSINESS.

None

ADJOURNMENT

Mr. Overbey made a motion to adjourn.

Mr. Beauch seconded the motion.

The meeting adjourned at 10:57 PM.

Robert C. Gibbons, Chairman
Board of Zoning Appeals